

# **EXHIBIT 2**

Code of Federal Regulations

Title 34. Education

Subtitle B. Regulations of the Offices of the Department of Education

Chapter VI. Office of Postsecondary Education, Department of Education

Part 668. Student Assistance General Provisions (Refs & Annos)

Subpart F. Misrepresentation (Refs & Annos)

34 C.F.R. § 668.71

§ 668.71 Scope and special definitions.

Effective: March 19, 2019

Currentness

<Text of section amended by 84 FR 9964, retroactively effective Oct. 16, 2018.>

(a) If the Secretary determines that an eligible institution has engaged in substantial misrepresentation, the Secretary may—

(1) Revoke the eligible institution's program participation agreement , if the institution is provisionally certified under § 668.13(c);

(2) Impose limitations on the institution's participation in the title IV, HEA programs, if the institution is provisionally certified under § 668.13(c);

(3) Deny participation applications made on behalf of the institution; or

(4) Initiate a proceeding against the eligible institution under subpart G of this part.

(b) This subpart establishes the types of activities that constitute substantial misrepresentation by an eligible institution. An eligible institution is deemed to have engaged in substantial misrepresentation when the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, marketing, advertising, recruiting or admissions services, makes a substantial misrepresentation about the nature of its educational program, its financial charges, or the employability of its graduates. Substantial misrepresentations are prohibited in all forms, including those made in any advertising, promotional materials, or in the marketing or sale of courses or programs of instruction offered by the institution.

(c) The following definitions apply to this subpart:

Misrepresentation: Any false, erroneous or misleading statement an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting or admissions services makes directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. A misleading

statement includes any statement that has the likelihood or tendency to mislead under the circumstances. A statement is any communication made in writing, visually, orally, or through other means. Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the institution required the student to make such an endorsement or testimonial to participate in a program.<sup>1</sup>

Prospective student: Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through advertising about enrolling at the institution.

Substantial misrepresentation: Any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

(Authority: [20 U.S.C. 1094](#))

### Credits

[[78 FR 57799](#), Sept. 20, 2013; [81 FR 76072](#), Nov. 1, 2016; [82 FR 27621](#), June 16, 2017; [82 FR 49114](#), Oct. 24, 2017; [83 FR 6459](#), Feb. 14, 2018; [84 FR 9964](#), March 19, 2019]

SOURCE: [45 FR 86855](#), Dec. 31, 1980; [50 FR 26953](#), June 28, 1985; [51 FR 8948](#), March 14, 1986; [51 FR 29398](#), Aug. 15, 1986; [56 FR 61337](#), Dec. 2, 1991; [59 FR 21866](#), April 26, 1994; [59 FR 22318](#), 22418, April 29, 1994; [60 FR 61433](#), Nov. 29, 1995; [64 FR 57358](#), Oct. 22, 1999; [64 FR 58617](#), Oct. 29, 1999; [64 FR 59037](#), 59066, Nov. 1, 1999; [65 FR 38729](#), June 22, 2000; [65 FR 65637](#), 65674, Nov. 1, 2000; [68 FR 66615](#), Nov. 26, 2003; [73 FR 35492](#), June 23, 2008; [75 FR 66958](#), Oct. 29, 2010; [78 FR 48050](#), Aug. 7, 2013; [80 FR 67193](#), Oct. 30, 2015; [81 FR 76070](#), Nov. 1, 2016; [82 FR 31913](#), July 11, 2017; [84 FR 49909](#), Sept. 23, 2019, unless otherwise noted.

AUTHORITY: [20 U.S.C. 1001–1003](#), [1070g](#), [1085](#), [1088](#), [1091](#), [1092](#), [1094](#), [1099c](#), [1099c–1](#), [1221–3](#), and [1231a](#), unless otherwise noted.; Section 668.14 also issued under [20 U.S.C. 1085](#), [1088](#), [1091](#), [1092](#), [1094](#), [1099a–3](#), [1099c](#), and [1141](#).; Section 668.41 also issued under [20 U.S.C. 1092](#), [1094](#), [1099c](#).; Section 668.91 also issued under [20 U.S.C. 1082](#), [1094](#).; Section 668.171 also issued under [20 U.S.C. 1094](#) and [1099c](#) and [section 4 of Pub.L. 95–452](#), [92 Stat. 1101–1109](#).; Section 668.172 also issued under [20 U.S.C. 1094](#) and [1099c](#) and [section 4 of Pub.L. 95–452](#), [92 Stat. 1101–1109](#).; Section 668.175 also issued under [20 U.S.C. 1094](#) and [1099c](#).

### Notes of Decisions (21)

Current through January 28, 2021; 86 FR 7351

### Footnotes

<sup>1</sup> 81 FR 76072 further purported to amend this definition but was without effect.